

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.13576 of 2019
Date of decision: 16.12.2019

Naresh Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. S.S. Hira, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. WALIA, J. (Oral)

1. Learned counsel for the petitioner contends that the petitioner was suspended vide order Annexure P/1 dated 02.05.2019 and was thereafter issued a charge sheet on 25.09.2019 without obtaining the approval of the competent authority and that in view of non-initiation of disciplinary proceedings before the expiry of period of 90 days from the date of suspension, the suspension as ordered against the petitioner, is not valid.

2. Learned counsel contends that neither the disciplinary proceedings were initiated within 90 days of date of suspension i.e. 02.05.2019 nor was approval of the next higher authority to allow continuance of suspension beyond 90 days obtained as stipulated in the second proviso to Rule 5 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016 (hereinafter referred to as 'the Rules, 2016').

Relevant extract of Rule 5 of the Rules, 2016, is reproduced as under:-

Suspension and withholding of emoluments:-

5 (1) The appointing authority or any other authority to which it is subordinate or the punishing authority or any other authority empowered in that behalf by the Governor, by general or special order, may place a Government employee under suspension where:-

(a) a disciplinary proceeding against him is contemplated or is pending, or

(b) a case against him in respect of any criminal offence is under investigation, inquiry or trial: or

(c) in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State:

Provided that where a Government employee against whom disciplinary proceedings are contemplated is suspended, such suspension shall not be valid, where the disciplinary proceedings are not initiated against him before the expiry of a period of ninety days from the date from which the employee was suspended.

Provided further that the competent authority in the matter may, at any time before the expiry of the said period of ninety days and after considering the special circumstances for not initiating disciplinary proceedings, to be recorded in writing and after seeking the approval of

next higher authority allow continuance of the suspension beyond ninety days but not beyond one hundred eighty days without the disciplinary proceedings being initiated;

Note 1:-

The order of suspension shall stand revoked, being invalid, unless the punishing authority obtains the approval of next higher authority and informs the Government employee under suspension the specific period of extension of suspension before the expiry of period of ninety days or extended period of another ninety days, as the case may be.

(2) A Government employee shall be deemed to have been placed under suspension by an order of the appointing authority:-

(a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation:-

The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of imprisonment after the conviction and for this purpose,

intermittent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government employee under suspension is set aside on appeal or review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government employee is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the punishing authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegation on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court

has passed an order purely on technical grounds without going into the merits of the case.

(5) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the competent authority.

(6) Where a Government employee is suspended or is deemed to have been suspended, whether in connection with any disciplinary proceeding or otherwise, and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by it in writing, direct that the Government employee shall continue to be under suspension until the termination of all or any of such proceedings.

(7) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority, which made or is deemed to have made the order or by any authority to which that authority is subordinate.

(8) When a Government employee is suspected of being concerned in the embezzlement of Government money, and is placed under suspension, the authority competent to order his dismissal may direct, that unless he furnishes security for the reimbursement of the said money to the satisfaction of his immediate superiors, the payment of

any sum due to him by the Government on the date of his suspension, shall be deferred until such time as the said authority passes final orders on the charges framed against him:

Provided that Government employee shall be entitled to the payment of a subsistence allowance in respect of the period for which the admissible emoluments, if any, are withheld.

3. Learned counsel contends that in view of disciplinary proceedings not having been initiated within 90 days of the suspension of the petitioner nor any approval having been obtained by the competent authority from the next higher authority for continuation of the suspension beyond 90 days, continuation of suspension of the petitioner is legally unsustainable and that in the circumstances the petitioner would be satisfied if the writ petition is disposed of at this stage by directing respondent No.1 to consider and decide the claim of the petitioner for revocation of suspension in terms of Rule 5 of the Rules, 2016 as also the decision of this Court dated 23.01.2019, in CWP No.2079 of 2018, in case titled as Mahabir Singh Lora Vs. State of Haryana.

4. Learned Sr. DAG states that he has no objection to the limited prayer made by learned counsel for the petitioner.

5. Without commenting upon the merits of the claim or for that matter entitlement of the petitioner for revocation of suspension in terms of Rule 5 of the Rules, 2016, the writ petition is disposed of by directing respondent No.1 to consider and decide the claim of the

petitioner for revocation of suspension in accordance with law by taking into account the rules as also the decision relied upon by the petitioner in case the same is applicable, within four weeks from the date of receipt of certified copy of the order.

6. Writ petition disposed of in aforementioned terms.

(B.S. WALIA)
JUDGE

16.12.2019
rajesh.k.khurana

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| 1. Whether speaking/reasoned | : | Yes/No. |
| 2. Whether reportable | : | Yes/No. |